

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE WESTERN DISTRICT OF NORTH CAROLINA
ASHEVILLE DIVISION

CASE NO.: 1:08CR55-2

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
v.)
)
EDWARD WILLIAM WAHLER)
)
Defendant.)
_____)

**MOTION TO RECONSIDER OR, IN THE
ALTERNATIVE, TO WITHDRAW AS “STAND BY” COUNSEL**

William R. Terpening, “stand by” counsel for Edward Wahler, moves the Court to reconsider the portions of its August 11, 2008 Order (Doc. No. 36) directing that “stand-by counsel shall screen Defendant’s proposed pro se filings by discussing each proposed filing with the Defendant and clarifying in writing that the same has occurred prior to actual filing” and that “unless accompanied by a certification from stand-by counsel as described herein, the Clerk of Court may receive, but not file, proposed pro se filings submitted by Defendant.” In support of this Motion, Mr. Terpening shows that:

1. He was appointed CJA counsel to Mr. Wahler on June 20, 2008.
2. Within days after the appointment, Mr. Wahler instructed Mr. Terpening that Mr. Terpening was to withdraw and was not to represent him.
3. In response to Mr. Wahler’s instruction, Mr. Terpening requested an inquiry into status of counsel hearing, which Magistrate Judge Keesler conducted on July 21, 2008.

4. At that hearing, Judge Keesler allowed Mr. Terpening to withdraw as counsel to Mr. Wahler, after carefully confirming that withdrawal was proper and that Mr. Wahler understood the consequences of proceeding pro se. Accordingly, at the Court and Mr. Wahler's direction, Mr. Terpening does not represent Mr. Wahler, and does not make any representations on his behalf — here or elsewhere — except to reiterate that Mr. Wahler has terminated the attorney-client relationship.
5. At Judge Keesler's request, Mr. Terpening agreed to remain available as stand by counsel to become actively involved in resumed representation if and only if, Mr. Wahler requested it in the future. Judge Keesler made clear that Mr. Terpening would not act in any representative capacity until such time, and could have no obligations or role as counsel.
6. Moreover, Mr. Wahler will not communicate with Mr. Terpening.
7. Reviewing and certifying Mr. Wahler's pro se filings would restore Mr. Terpening to a representative capacity, which would contravene Mr. Wahler's instructions and the orders of Judge Keesler. Because Mr. Wahler has terminated the attorney-client relationship with Mr. Terpening, complying with the Court's order would also place Mr. Terpening in an untenable ethical position.
8. Finally, as a practical issue, Mr. Terpening cannot review Mr. Wahler's motions before they are filed because Mr. Wahler has terminated communications with former counsel, Mr. Terpening.
9. The Court already has allowed Mr. Terpening to withdraw as counsel. If the Court denies this request regarding relief from any obligation to review or certify Mr. Wahler's motions, Mr. Terpening requests that the Court allow him to withdraw even

as “stand by” counsel, for the reasons already stated by Judge Kessler and Mr. Wahler on the record at the July 21, 2008 hearing.

Wherefore, Mr. Terpening requests that the Court vacate the portions of its August 11, 2008 order requiring his review and certification of filings. If the Court is inclined not to grant this relief, Mr. Terpening requests authorization to order the transcript of the inquiry into status of counsel hearing transcript so he can refer the Court to Magistrate Judge Keesler’s articulation of his role as “stand by” counsel, and requests a hearing on the issue.

Respectfully submitted this 14th day of August, 2008.

s/William R. Terpening
William R. Terpening
N.C. Bar No. 36418
Sarah E. Wallace
N.C. Bar No. 37120

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Counsel for Defendant
Edward William Wahler

CERTIFICATE OF SERVICE

This is to certify that I caused a copy of the foregoing to be served on the following individual by causing a copy of the same to be electronically filed with the Western District of North Carolina:

Jill Rose
Jill.Rose@usdoj.gov

Craig Randall
Craig.Randall@usdoj.gov

Mark Odulio
Mark.Odulio@usdoj.gov

This the 14th day of August, 2008.

s/William R. Terpening
William R. Terpening

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ORDER

For good cause shown, Mr. Terpening is permitted to withdraw as “stand by” counsel to Mr. Wahler.

This 14th day of August, 2008.

HON. RICHARD VOORHEES
UNITED STATES DISTRICT JUDGE